

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

JETBLUE AIRWAYS CORPORATION
and SPIRIT AIRLINES, INC.

Defendants.

Case No. 1:23-cv-10511-WGY

GABRIEL GARAVANIAN, et al.,

Plaintiffs,

v.

JETBLUE AIRWAYS CORPORATION
and SPIRIT AIRLINES, INC.

Defendants.

Case No. 1:23-cv-10678-WGY

**UNITED AIRLINES INC.'S UNOPPOSED MOTION TO IMPOUND
CONFIDENTIAL MATERIALS**

Pursuant to Local Rule 7.2, the Protective Order in these cases (1:23-cv-10678-WGY ECF No. 164), and the Joint Proposed Confidentiality Protocol (1:23-cv-10511-WGY ECF No. 154; 1:23-cv-10678-WGY ECF No. 183), non-party United Airlines, Inc. (*United*), respectfully moves the Court for an order of impoundment of United's Confidential and Highly Confidential materials that have been designated by the Parties for use at trial until further order of the Court.

In response to pre-suit Civil Investigative Demand subpoenas issued by the Department of Justice and subpoenas issued by the Parties under Fed. R. Civ. P. 45, United produced to the Parties documents and testimony containing Confidential and Highly Confidential information relevant to its air transportation service offerings, including network plans, strategic assessments, aircraft gauge, pricing, advertising or marketing efforts, and other strategic operating information concerning airport operations (*Protected Materials*). The Parties have designated some of these Protected Materials for use at trial. United's request to impound the Protected Materials and redact portions of the deposition transcript will prevent harm to its competitive standing resulting from the disclosure of current and forward looking commercially sensitive information contained therein. The Parties do not oppose the relief requested in this motion but reserve the right to request that the Court unseal specific portions of United documents or deposition testimony and/or to address issues raised during any future court hearing regarding confidentiality. The requested impoundment would not impede trial as the Court could reassess the need to include any impounded information in its rulings post-trial.

In particular, given the sensitive nature of the information contained in United's Protected Materials, United respectfully requests the impoundment of the following Protected Materials in their entirety:

Exhibit No. <i>Government Action No.</i> <i>Private Action No.</i> <i>Nocella Ex. No.</i> <i>Bates No.</i>	Description	Basis of Motion to Impound
AHV (UA31106-000000581-585)	Presentation titled “RSA Business/Leisure Model Overview”.	United moves to impound this document because it contains competitively sensitive information about United’s operational, competitive, and business strategies.
AHW TX0779 Nocella Ex. 23 (UALIT-00067697)	Presentation titled “Domestic Fare Basis Codes & Booking Class Logic”.	United moves to impound this document because it contains competitively sensitive information about United’s operational, competitive, and business strategies.
AHX TX0780 Nocella Ex. 24 (UALIT-00067737)	Presentation titled “ULCC Strategy”.	United moves to impound this document because it contains competitively sensitive information about United’s operational, competitive, and business strategies.
AQW	Unified Ticket Data	United moves to impound this document because it contains competitively sensitive data about United’s operations.
BGZ TX0774 Nocella Ex. 18 (UA31106-000003074-3075)	Email from Scott Kirby to Jon Roitman dated April 26, 2022.	United moves to impound this document because it contains competitively sensitive information about United’s operational, competitive, and business strategies.
BHA TX0773 Nocella Ex. 17 (UA31106-000003859-3862)	Email from Scott Kirby to Andrew Nocella dated July 6, 2022.	United moves to impound this document because it contains competitively sensitive information about United’s operational, competitive, and business strategies.

BHB TX0772 Nocella Ex. 16 (UALIT-00006269-6272)	Email from Scott Kirby to Andrew Nocella.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
BHC TX1399 (UALIT-00010164-10184)	Presentation titled "E-Team materials" and dated August 8, 2022.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
BHD TX1400 (UALIT-00036871)	Market pricing slides.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
BHE TX0765 Nocella Ex. 9 (UALIT-00039606)	Presentation titled "Domestic Update" and dated November 11, 2022.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
BHF TX0761 Nocella Ex. 5 (UALIT-00040403)	Presentation titled "Domestic Update" and dated July 12, 2022.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
BHG TX1403 (UALIT-00050494)	Presentation titled "Domestic Pricing Review" and dated March 23, 2023.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
BHH TX1404 (UALIT-00067705)	Presentation titled "Intro to Pricing".	United moves to impound this document because it contains competitively

		sensitive information about United's operational, competitive, and business strategies.
BHI TX0777 Nocella Ex. 21 (UALIT-00070860-70863)	Email from Lindsay Brehm to Scott Kirby, Andrew Nocella, and others dated September 12, 2022.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
BHJ TX0778 Nocella Ex. 22 (UALIT-00070957-71069)	Presentation titled "Strategy Session" and dated September 21, 2022.	United moves to impound this document because it reveals information considered by the Board of Directors in strategic deliberation, including future plans and strategies.
BHK TX0770 Nocella Ex. 14 (UALIT-00071070-71110)	Presentation titled "UAL 1Q/FY23 earnings prep" dated April 2023.	United moves to impound this document because it reveals information considered by the Board of Directors in strategic deliberation, including future plans and strategies.
BHL TX1405 (UALIT-00081315-81318)	Email from Shawn Morris to Andrew Nocella dated September 6, 2022.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
BHM TX1406 (UALIT-00082222-82223)	Presentation titled "4Q22/FY22 Earnings Call" and dated 1/18/2023.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
BHN TX0757 Nocella Ex. 1 (UALIT-00093921-93922)	Email from Scott Kirby to Patrick Quayle dated January 28, 2023.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business

		strategies.
BHO TX0759 Nocella Ex. 3 (UALIT2-00004668-4817)	Presentation titled “Board of Directors – Strategy Session” and dated September 13-14, 2017.	United moves to impound this document because it reveals information considered by the Board of Directors in strategic deliberation, including future plans and strategies.
BHP TX1407 (UALIT2-00032255-32263)	Email from Scott Kirby to Andrew Nocella dated June 12, 2018.	United moves to impound this document because it contains competitively sensitive information about United’s operational, competitive, and business strategies.
BHQ TX1408 (UALIT2-00039211-39311)	Presentation titled “United Brand Tracker” and dated May 7, 2021.	United moves to impound this document because it contains competitively sensitive information about United’s operational, competitive, and business strategies.
BHR TX1409 (UALIT2-00044342-44389)	Presentation titled “Domestic Pricing Meeting” and dated December 12, 2019.	United moves to impound this document because it contains competitively sensitive information about United’s operational, competitive, and business strategies.
BSE TX0767 Nocella Ex. 11 (UALIT-00050479)	Presentation titled Domestic Pricing Review” and dated February 23, 2023.	United moves to impound this document because it contains competitively sensitive information about United’s operational, competitive, and business strategies.
BSF TX1718 (UALIT2-00020704-20768)	Email from Scott Kirby to eTeam dated July 2, 2021.	United moves to impound this document because it contains competitively sensitive information about United’s operational, competitive, and business strategies.

BSG TX1719 (UALIT2-00021758-21781)	Presentation titled “Domestic Update” and dated February 28, 2023.	United moves to impound this document because it contains competitively sensitive information about United’s operational, competitive, and business strategies.
BSH TX1720 (UALIT2-00022050-22082)	Presentation titled “Atlantic DRM – January 31 st 2023”.	United moves to impound this document because it contains competitively sensitive information about United’s operational, competitive, and business strategies.
BSI TX1721 (UALIT2-00035752-35754)	Email from Andy Fine to Domestic Pricing and Domestic RM dated December 14, 2022.	United moves to impound this document because it contains competitively sensitive information about United’s operational, competitive, and business strategies.
BSJ TX1722 (UALIT2-00035755-35759)	Email from Andy Fine to Domestic Pricing and Domestic RM dated December 8, 2022.	United moves to impound this document because it contains competitively sensitive information about United’s operational, competitive, and business strategies.
BSK TX1723 (UALIT2-00035839-35841)	Email from Andy Fine to Domestic Pricing and Domestic RM dated September 28, 2022.	United moves to impound this document because it contains competitively sensitive information about United’s operational, competitive, and business strategies.
BSL TX1724 (UALIT2-00036044-36046)	Email from Andy Fine to Domestic Pricing and Domestic RM dated November 9, 2022.	United moves to impound this document because it contains competitively sensitive information about United’s operational, competitive, and business strategies.
BSM TX1725 (UALIT2-00036102)	Email from Andy Fine to Domestic Pricing and Domestic RM dated	United moves to impound this document because it contains competitively

	October 26, 2022.	sensitive information about United's operational, competitive, and business strategies.
BSN TX1726 (UALIT2-00036359-36361)	Email from Andy Fine to Domestic Pricing and Domestic RM dated October 6, 2022.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
BSO TX1727 (UALIT2-00036399-36401)	Email from Andy Fine to Domestic Pricing and Domestic RM dated November 16, 2022.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
BSP TX1728 (UALIT2-00036693-36695)	Email from Andy Fine to Domestic Pricing and Domestic RM dated September 21, 2022.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
BSQ TX1729 (UALIT2-00036768-36770)	Email from Lauren Aumiller to Domestic Pricing and Domestic RM dated August 17, 2022.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
BSR TX1730 (UALIT2-00037158-37163)	Email from Matt Phelan to Lauren Aumiller, Jason Nolan, and Andy Fine dated November 4, 2022.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
BSS TX1731 (UALIT2-00037200-37202)	Email from Andy Fine to Domestic Pricing and Domestic RM dated December 28, 2022.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business

		strategies.
BST TX1732 (UALIT2-00037203-37205)	Email from Andy Fine to Domestic Pricing and Domestic RM dated December 21, 2022.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
BSU TX1733 (UALIT2-00037233-37236)	Email from Matt Phelan to Lauren Aumiller, Andy Fine, and Jason Nolan dated November 3, 2022.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
BSV TX1734 (UALIT2-00037237-37239)	Email from Andy Fine to Domestic Pricing and Domestic RM dated September 16, 2022.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
BSW TX1735 (UALIT2-00037327-37329)	Email from Andy Fine to Domestic Pricing and Domestic RM dated October 19, 2022.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
BSX TX1736 (UALIT2-00037553-37554)	Email from Lauren Aumiller to Domestic Pricing and Domestic RM dated September 7, 2022.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
BSY TX1737 (UALIT2-00037555-37556)	Email from Andy Fine to Domestic Pricing and Domestic RM dated August 31, 2022.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.

BSZ TX1738 (UALIT2-00037837-37839)	Email from Andy Fine to Domestic Pricing and Domestic RM dated November 30, 2022.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
128 (UALIT-00000733-883)	Presentation titled "Board of Directors – Strategy Session" and dated September 13-14, 2017.	United moves to impound this document because it reveals information considered by the Board of Directors in strategic deliberation, including future plans and strategies.
129 TX0782 Nocella Ex. 26 (UALIT-00056623)	Presentation titled "Domestic Pricing Review" and dated September 1, 2021.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
130 Nocella Ex. 3 (UALIT2-00004667-4817)	Presentation titled "Board of Directors – Strategy Session" and dated September 13-14, 2017.	United moves to impound this document because it reveals information considered by the Board of Directors in strategic deliberation, including future plans and strategies.
199 TX1401 (UALIT-00039426)	Presentation titled "Domestic Update" and dated November 4, 2022.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
200 Nocella Ex. 11 (UALIT-00050479)	Presentation titled "Domestic Pricing Review" and dated February 23, 2023.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
201 TX1402 (UALIT-00050490)	Presentation titled "Domestic Pricing Review" and dated March 15, 2023.	United moves to impound this document because it contains competitively

		sensitive information about United's operational, competitive, and business strategies.
202 TX0766 Nocella Ex. 10 (UALIT-00050505)	Presentation titled "Domestic Pricing Review" and dated April 12, 2023.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
203 TX0764 Nocella Ex. 8 (UALIT-00056626)	Presentation titled "Domestic Pricing Review" and dated September 14, 2022.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
204 TX0762; TX0763 Nocella Exs. 6 & 7 (UALIT2-00021712-21746)	Presentation titled "3/23 DRM – Agenda".	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
TX0768; TX0769 Nocella Exs. 12 & 13 (UALIT-00067385-67386)	Presentation titled "Airline Industry Fundamentals" and dated Summer 2019.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
TX0771 Nocella Ex. 15 (UALIT-00071072-71110)	Presentation titled "UAL 1Q/FY23 earnings prep" and dated April 2023	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies.
TX0775; TX0776 Nocella Exs. 19 & 20 (UALIT-00070606-70626)	Presentation titled "Does the post-pandemic environment create a new era for aviation?" and dated February 15, 2023.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business

		strategies.
TX0781 Nocella Ex. 25 (UALIT2-00013970-13974)	Email from Andrew Nocella to Andrew Nocella dated February 28, 2021.	United moves to impound this document because it contains competitively sensitive information about United's operational, competitive, and business strategies. United further moves to impound this document because it contains confidential employee information.

Finally, United requests the redaction of limited portions of the following deposition transcript:

- United moves to redact portions of the deposition of Andrew Nocella under Rule 30(b)(6) of the Federal Rules of Civil Procedure that are designated Confidential or Highly Confidential as specified in United's July 28, 2023, letters to the Parties.¹

DISCUSSION

The Court may issue an order of impoundment requiring that confidential information be protected from public disclosure when a party shows "good cause" for keeping the information confidential. Fed. R. Civ. P. 26(c)(1). Good cause exists where the moving party makes a "factual showing of the harm that would be sustained if the court did not allow the filing under seal." *Dunkin Donuts Franchised Restaurants, LLC v. Agawam Donuts, Inc.*, 2008 WL 427290, at *1 (D. Mass. Feb. 13, 2008). In civil cases, the public's right to access judicial records may be overcome where the motion is "narrowly tailored" to protect "trade secrets in the documents or confidential business

¹ United includes a copy of its confidentiality designation letter provided to the Parties in the Appendix to this Motion.

information.” *Skyhook Wireless, Inc. v. Google, Inc.*, 2015 WL 13675231, at *2 (D. Mass. Feb. 18, 2015).

The Protected Materials reveal details of non-party United’s future business plans, competitive strategies, network plans, future operational and fleet plans, alliances, sensitive customer information, and forward-looking strategic, business planning, and financial information. United’s requests to impound the Protected Materials and redact portions of the deposition transcript are targeted to protect its commercial and financial interests from harm resulting by the disclosure of competitively sensitive information, including but not limited to:

- Future network plans and strategy, the disclosure of which could allow competitors to undermine United’s growth plans by previewing how United makes competitive decisions; and
- United’s strategies for handling certain industry risks and for dealing with key industry suppliers, the disclosure of which could harm United’s ability to implement these strategies.

“Courts have recognized the propriety of issuing protective orders to limit the disclosure of such sensitive commercial information among competitors, particularly that of non-parties.” *W.N. Motors, Inc. v. Nissan North America, Inc.*, 2022 WL 1568443 (D. Mass. May 18, 2022) (citing *GTE Prods. Corp. v. Gee*, 112 F.R.D. 169, 171-72 (D. Mass. 1986) (collecting cases and finding that “attorney’s eyes only” protection of competitor’s commercial business information “balance[d] the risk of competitive injury to third parties as against the need for the defendants”); *Anaqua, Inc. v. Schroeder*, 2012 WL 12960760, at *3 (D. Mass. Sept. 14, 2012) (“Courts generally have protected the identity of a company’s clients and its pricing information.”); *Westside-Marrero Jeep Eagle, Inc. v. Chrysler Corp.*, 1998 WL 186728, at *2 (E.D. La. Apr. 17, 1998) (“Ample precedent

exists for limiting disclosure of highly sensitive, confidential, or proprietary information to attorneys and experts, particularly when there is some risk that a party might use the information or disseminate it to others who might employ it to gain a competitive advantage over the producing party.”) (collecting cases)). Given the nature of the information contained in the Protected Materials, and the fact that Defendants and other airlines whose executives are expected to testify at trial are United’s competitors, public disclosure could reasonably threaten United’s current commercial interests, current non-public contract terms, as well as current sales, marketing, and negotiation strategies. Furthermore, any public disclosure of these materials could significantly compromise United’s ability to improve network operations and service for its customers, and in turn could impair its ability to compete.

United’s requests to impound the Protected Materials and redact portions of the deposition transcript are narrowly tailored. For example, United does not seek the impoundment of documents reflecting plans that have already been made public, or that no longer provide insight into the company’s future plans. Rather, United’s requests are narrowly tailored to protect materials that contain sensitive commercial information not in the public domain, the disclosure of which would cause substantial injury to United’s current commercial and financial interests. And, importantly, the Parties have not objected to any of United’s confidentially designation throughout the pre-suit investigation or during the discovery process in both cases, further showing that the material designated is competitively sensitive and should remain confidential.

CONCLUSION

Accordingly, and pursuant to the Stipulated Protected Order and Joint Proposed Confidentiality Protocol, United respectfully requests that the Court grant its unopposed motion to impound the Protected Materials and redact portions of the deposition transcript.

Dated: September 29, 2023

Respectfully submitted,

/s/ John J. Falvey

John J. Falvey, Jr. (BBO No. 542675)

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Attorneys for United Airlines, Inc.

LOCAL RULE 7.1(a)(2) CERTIFICATE and CERTIFICATE OF SERVICE

I certify that counsel for Plaintiffs and Defendants regarding the foregoing requested relief and counsel do not oppose the relief requested in this motion, but reserve the right to request that the Court unseal specific United documents or testimony and/or to address issues raised during any future court hearing regarding confidentiality.

I further certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to the non-registered participants as known this 29th day of September, 2023.

/s/ John F. Falvey

Appendix



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July 28, 2023

**Re: United States of America v. JetBlue Airways Corporation and Spirit Airlines, Inc., No. 1:23-cv-10511-WGY (D. Mass.);
Garavanian v. JetBlue Airways Corporation and Spirit Airlines, Inc., 1:23-cv-10678-WGY (D. Mass.)**

Dear Counsel:

On behalf of United Airlines, Inc., and pursuant to the Stipulated Protective Order, the following portions of Andrew Nocella's June 28, 2023, deposition in the above captioned matters are designated Highly Confidential or Confidential

United States v. JetBlue Airways Co., No. 1-23-cv-10511-WGY (D. Mass.)

Highly Confidential

All testimony and exhibits listed below are designated Highly Confidential:

- | | | |
|----------------|---------------------|---------------------|
| 1. Exhibit 1 | 19. Exhibit 24 | 37. 110:15 - 112:8 |
| 2. Exhibit 5 | 20. Exhibit 26 | 38. 114:19 - 115:23 |
| 3. Exhibit 6 | 21. 24:12 - 25:13 | 39. 116:3 - 116:16 |
| 4. Exhibit 7 | 22. 48:16 - 49:9 | 40. 116:22 - 119:8 |
| 5. Exhibit 8 | 23. 60:16 - 62:2 | 41. 119:10 - 120:12 |
| 6. Exhibit 9 | 24. 64:11 - 65:3 | 42. 120:15 - 121:9 |
| 7. Exhibit 10 | 25. 68:12 - 71:12 | 43. 123:7 - 123:15 |
| 8. Exhibit 11 | 26. 71:14 - 72:23 | 44. 123:21 - 123:25 |
| 9. Exhibit 12 | 27. 73:5 - 75:24 | 45. 124:13 - 125:1 |
| 10. Exhibit 14 | 28. 76:11 - 84:12 | 46. 125:3 - 126:25 |
| 11. Exhibit 15 | 29. 84:18 - 86:10 | 47. 154:6 - 155:2 |
| 12. Exhibit 16 | 30. 89:16 - 91:1 | 48. 155:17 - 159:21 |
| 13. Exhibit 18 | 31. 96:2 - 97:24 | 49. 162:6 - 167:7 |
| 14. Exhibit 19 | 32. 100:10 - 102:15 | 50. 167:10 - 167:22 |
| 15. Exhibit 20 | 33. 102:17 - 104:25 | 51. 174:20 - 176:20 |
| 16. Exhibit 21 | 34. 105:7 - 105:20 | 52. 176:22 - 177:16 |
| 17. Exhibit 22 | 35. 106:16 - 109:6 | 53. 178:2 - 179:13 |
| 18. Exhibit 23 | 36. 109:12 - 110:5 | 54. 179:21 - 180:6 |

55. 180:14 - 181:23

58. 196:4 - 197:2

61. 203:5 - 204:1

56. 182:9 - 184:16

59. 197:25 - 200:20

57. 192:5 - 196:2

60. 200:23 - 203:1

In addition, the marked portions of Exhibit 17 as attached are designated Highly Confidential.

Confidential

All testimony and exhibits listed below are designated Confidential:

1. Exhibit 3

8. 41:16 - 42:13

15. 144:4 - 146:4

2. Exhibit 13

9. 42:17 - 42:25

16. 147:2 - 150:3

3. Exhibit 25

10. 43:4 - 44:2

17. 150:10 - 151:1

4. 35:3 - 37:2

11. 44:7 - 46:20

18. 168:11 - 171:3

5. 37:5 - 38:12

12. 59:2 - 60:2

19. 171:24 - 173:5

6. 38:20 - 40:2

13. 138:24 - 140:22

20. 173:16 - 174:19

7. 40:8 - 41:11

14. 142:24 - 143:9

Garavanian v. JetBlue Airways Co., No. 1:23-cv-10678-WGY (D. Mass.)

Highly Confidential

All testimony listed below is designated Highly Confidential:

1. 8:8 - 8:11

2. 8:13 - 9:3

3. 9:5 - 9:11

4. 9:17 - 10:21

Sincerely,

/s/ Mary N. Lehner

Mary N. Lehner
Attorney for United Airlines, Inc.